



New Motor Vehicle Board

In-Site

July 2002

A Publication of the California New Motor Vehicle Board

02.3 Edition



NEW MOTOR VEHICLE BOARD HOLDS FIRST INDUSTRY ROUNDTABLE

Board Members Alan Skobin,
Tom Flesh, Frederick Hitchcock,
Glenn Stevens, and
Solon Soteris

Drawing a larger than expected turnout, the New Motor Vehicle Board's first industry roundtable held April 25, 2002, was well received. As organized by Board

Development Committee Chair Tom Flesh, it began as an opportunity for manufacturers to update the Board Members' industry knowledge. The meeting expanded to include staff from manufacturers, distributors, and numerous dealers, as the desire

to discuss industry issues with the Board and other industry members became clear.

During the course of the meeting, the roundtable participants wrestled with issues such as the importation of grey market Canadian vehicles into California, and the implications of publicly owned dealer groups versus traditional, locally owned dealerships. The result was a meaningful and animated dialog skillfully guided by Mr. Flesh.

Contributing greatly to the success of the roundtable was the impressive caliber of the participants. In an admirable spirit of interest and cooperation, major



Peter Welch, CMCD, Director of
Government and Legal Affairs



General Motors Executives Ron Sobrero
and Frank Dunne

(Roundtable, continued to page 2)

manufacturers and distributors including *American Honda Motor Company, Inc.*, *BMW of North America, Inc.*, *DaimlerChrysler Corporation*, *Ford Motor Company*, *General Motors Corporation*, *Kia Motors America, Inc.*, and *Toyota Motor Sales, USA, Inc.*, sent senior staff to share ideas and provide insights. The *California Motor Car Dealers Association* was well represented by Peter Welch, Director of Government and Legal Affairs, Jay Gorman, Executive Vice President, and CMCDA President Avery Greene. In addition, new car dealers and industry attorneys also attended. The consensus was that the discussions were valuable, productive, and of interest to the Board and the participants.



Tom Novi, Angelo Quaranta,
Kim Udovic, and Margie Lewis

NEW MOTOR VEHICLE BOARD DEALER MEMBERS LEAD AUTOMOTIVE DEALERS NATIONWIDE

The Dealer Members of California's New Motor Vehicle Board have again been recognized as preeminent dealers in the automobile industry. While the National Automobile Dealer's Association estimates there are approximately twenty-two thousand dealers nationally, all three NMVB Dealer Members rank in the *Top 100 Dealership Groups in the United States*, according to *Automotive News*.

Ranking *thirteenth* in the United States is Dealer Member David W. Wilson, President of David Wilson Automotive Group. *Thirty-fifth* is Dealer Member Alan J. Skobin, General Counsel for Galpin Motors, Incorporated. Board President Frederick Hitchcock, Jr., CEO of Hitchcock Automotive Resources, ranks *thirty-ninth* in the United States.

IN-SITE



State of California
Gray Davis, Governor

California New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, California 95814
(916) 445-2080
e-mail: nmvb@pacbell.net

Department of Motor Vehicles
Steven Gourley, Director



*Business, Transportation
and Housing Agency*
Maria Contreras-Sweet, Secretary

New Motor Vehicle Board

Officers

Frederick E. (Fritz) Hitchcock,
President
Glenn E. Stevens,
Vice-President

Members

Wendy Brogin
Robert T. (Tom) Flesh
Angelo Quaranta
Alan J. Skobin
Solon C. Soteras
David W. Wilson

Executive Director

Tom Novi

General Counsel

Howard Weinberg

Questions or comments: Cara O'Neill-Stewart, Editor, nmvb@pacbell.net

EDSEL FORD SPEAKS AT CMCDA STATE CONVENTION

Edsel B. Ford II,
Avery Greene,
President, CMCDA



"The difference between a good company and a great company is that a good company delivers excellent products and services. A great company delivers excellent products and services and strives to make the world a better place." California Motor Car Dealers Association Convention 2002 ("CMCDA") attendees were treated to this inspirational message from Edsel B. Ford II, great-grandson of Henry Ford, in Indian Wells, April 24-27, 2002. Mr. Ford quickly endeared himself to his listeners with his opening, "Dealers are the Olympians of our business." His engaged listeners learned of his admirable commitment to charitable organizations during the course of this enjoyable and positive presentation.

"With advantage comes responsibility." Social responsibility was the overall theme stressed by Mr. Ford. He complemented the impressive commitment shown by automotive dealers across the country, while challenging them to strive further in their charitable efforts. Mr. Ford stated profit alone is not a sustainable goal and that a company must have a clearly defined mission and a simple commitment to serve employees and communities.

Mr. Ford stressed social responsibility actually increases a company's bottom line, contrary to popular belief. He reminded his audience that community involvement increases both the reputation and



**New Motor
Vehicle Board
Members and
Staff with
Edsel B. Ford II
(1-r):**

Robin Parker,
Howard Weinberg,
Wendy Brogin,
Glenn Stevens,
Angelo Quaranta,
Cara O'Neill-
Stewart, Tom Flesh,
Edsel B. Ford II,
Solon Soteras,
Frederick
Hitchcock, and
Tom Novi

REVENUE

NEW MOTOR VEHICLE DEALER Annual Fee:	\$	557,764.00
NEW MOTOR VEHICLE BOARD Filing fees:		12,600.00
NEW MOTOR VEHICLE BOARD Manufacturer/Distributor Annual fee:		972,551.40
NEW MOTOR VEHICLE BOARD Hearing Transcripts:		33,753.79
Arbitration Cert. Program Reimbursement		2,527.44
2001-2002 TOTAL TO DATE	\$	1,579,196.63

public image of a company, and, that both are vital components of a healthy, prosperous organization. He stated a company perceived as caring and responsible naturally enjoys a better image than one perceived as indifferent. This positive image increases not only sales, but affords the company the additional edge of luring the best and the brightest into its employ.

He concluded by complementing the roles dealers play within their communities. He stressed that family-run, multigenerational dealerships have the opportunity to serve their communities well because they are not just a part of the community, but are "...the roots of the community."

SUPREME COURT TO REVIEW LEMON LAW CASE

The California Supreme Court will soon decide whether California's Song-Beverly Consumer Warranty Act, better known as the "lemon law," applies to extended warranties as well as the original factory warranty.

In *Gavaldon v. DaimlerChrysler*, S104477, a minivan owner filed suit when her minivan developed unrepairable transmission problems after the factory warranty expired. At the trial level, Gavaldon argued the lemon law applied because an extended warranty purchased at the time of sale covered the minivan. The trial judge was

convinced and awarded damages accordingly. The appellate court, however, overturned Gavaldon's judgment on appeal.

In her petition to the Supreme Court, Gavaldon stated the case warranted Supreme Court consideration because a significant number of lemon law cases are heard in California courts each year. She also stated that thousands of extended warranties are sold each year in California, and as such, the warranty issue "...is an important question of law that merits a prompt, uniform resolution."



RECENT NMVB RULINGS AND DECISIONS

Foothill International, Inc., dba Foothill Freightliner Los Angeles v. Freightliner, LLC, Protest No. PR-1801-02

Freightliner gave notice of its intention to terminate the three Freightliner franchises of Foothill. Foothill sought a hearing before the Board asserting that Freightliner did not have good cause to terminate. Freightliner claimed that the franchises contained an arbitration agreement, and filed an Objection to Jurisdiction and Motion to Dismiss, in which Freightliner alleged that the Federal Arbitration Act preempted the provisions of the California Vehicle Code. Freightliner also filed a request for arbitration with the American Arbitration Association to be conducted in Oregon.

A Board Administrative Law Judge ("ALJ") conducted a hearing on Freightliner's motion and concluded that the franchises did not contain an applicable arbitration provision. Freightliner's Motion to Dismiss was denied and the matter will be set for hearing in accordance with the Vehicle Code by an ALJ of the Board.

Corning Truck & Radiator Service, Inc. v. International Truck & Engine Corporation, Protest No. PR-1765-01

The matter involved a protest of the intended termination of a medium duty International truck franchise in Corning, California. The protest was overruled on June 6, 2002, by the Board after determining there was good cause for the termination.

HEARINGS

August 14, 2002 - PR-1800-02

Special Vehicles, Inc. v. Tiger Truck L.L.C.

September 3, 2002 - PR-1802-02

LA Suzuki v. American Suzuki

September 16, 2002 - PR-1803-02

Full Tilt Acquisitions, LLC v. Yamaha

September 30, 2002 - PR-1807-02

Casa de Gonzales Kia in Whittier v. Kia Motors America, Inc.

October 7, 2002 - PR-1804-02

Vreeland Cadillac-Pontiac v. General Motors

October 28, 2002 - PR-1783-02

Vacaville Ford Mercury v. Ford Lincoln Mercury Division

**Dates are subject to change and cases
may settle prior to hearing**

NEW MOTOR VEHICLE BOARD PENDING APPELLATE CASES

Duarte & Witting Inc., dba Nader Chrysler-Plymouth v. New Motor Vehicle Board; DaimlerChrysler Motors Corporation, Real Party in Interest

Third District Court of Appeal, Filed January 4, 2002

The legal issue is whether the Board has the statutory authority to grant a motion to dismiss a protest.

This case flows from DaimlerChrysler's decision to discontinue the Plymouth line of vehicles. The dealer, Nader Chrysler-Plymouth ("Nader") protested the termination of its Plymouth dealership. Nader filed a Petition for Writ of Administrative Mandamus after the Board issued a ruling dismissing Nader's protest without prejudice for lack of jurisdiction. The Board concluded that it lacked the authority to grant the remedy requested in the protest "...since it has no power to order the manufacturer to remain in business or to continue manufacturing any particular line-make, nor can it order the issuance of a new franchise in violation of the rights of third-parties, nor does it have the power to award damages."

Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, dba David J. Phillips Mazda, Real Party in Interest

Third District Court of Appeal, Filed December 7, 2001

"Nothing in this world can take the place of persistence. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination alone are omnipotent."

-Calvin Coolidge

The legal issue is whether the Board has the statutory authority under Vehicle Code section 3050(c) to adjudicate petition disputes when both parties are licensees, i.e., new motor vehicle dealers, manufacturers, and distributors.

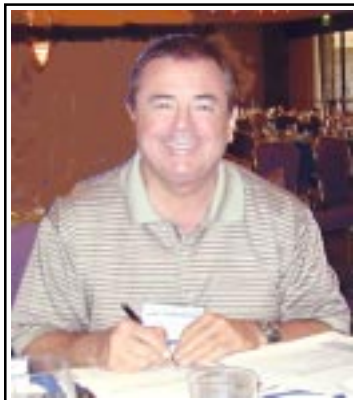
The underlying dispute concerns the transfer of stock in the dealership, David J. Phillips Buick-Pontiac, dba David J. Phillips Mazda. The franchisor, Mazda Motor of America, Inc., filed a Petition for Writ of Administrative Mandamus after the Board Administrative Law Judge ("ALJ") denied its motion to strike the Board petition or exercise its discretion not to hear the petition. The ALJ held that the dealership's claims are "...precisely the types of claims which this Board has particular knowledge and expertise to hear."



NMVB CASES

PROTESTS, PETITIONS, APPEALS

<u>Vehicle Code Section</u>	<u>Active</u>
3060 Termination/Modification	20
3062 Establishment/Relocation	7
3064 Delivery and Preparation	0
3065 Warranty Reimbursement	1
3065.1 Franchisor Incentive	0
TOTAL PROTESTS:	28
3050(c) PETITIONS	4
3050(b) APPEALS	0
TOTAL CASES:	32



DEALER MAGAZINE FEATURES BOARD PRESIDENT

Frederick E. Hitchcock,
Board President

Described as building "...one of the most successful dealer groups in the country," it is no wonder *Dealer Magazine* selected New Motor Vehicle Board President, Fritz Hitchcock, for its March 2002 cover. The accompanying article focused upon Mr. Hitchcock's early beginnings and the advancement of his career in the retail automobile business.

Mr. Hitchcock recalled it began in 1960 when California's moderate weather lured him from Iowa. In 1961, he secured employment with the Chrysler Corporation as a management trainee in the regional Dodge Division Office, but after five and a half years, he wanted to "...try [his] hand at retail." Accordingly, he went to work for a large Ford dealer in Encino, California.

He quickly began acquiring ownership interest in dealerships and building his impressive dealership group. When asked about the change from Marina Toyota in Long Beach to his current City of Industry location, he stated, "We were doing very well, but half the circle of influence around a beach store is water and it's hard to get the fish financed."

Mr. Hitchcock reveals himself to be an astute businessman and an employer most would welcome. He instructs his salespeople, "Just try to do the right thing," and explains, "If you do that, you stand a better chance to succeed." His advice to other entrepreneurs: "[Y]our employees probably should come first. If you can keep your employees happy, they are more likely to make your customers happy. Also, as I said earlier, do the right thing...have an honest rapport with people. Never ever, lie to customers."

Mr. Hitchcock has served on industry councils and associations as a way of giving back to the community and he urges all dealers to become involved in dealer councils, the legislative process, and NADA or AIADA.



MATERNITY LEAVE

Robin Parker,
Senior Staff Counsel

If you've been unsuccessful reaching Senior Staff Counsel, Robin Parker, at the Board's offices, there's a very good reason. Robin began maternity leave on June 12, 2002. She gave birth to her new baby boy, Christian, on June 14, 2002, at 9:00 p.m. Christian weighed 8 pounds 7 ounces and measured 20 inches long.

While Robin's experience and expertise will be greatly missed in her absence, the staff wishes her much happiness and looks forward to her return this fall. During her absence, Cara O'Neill-Stewart will handle all case processing issues.

TOYOTA AWARD

Board President, Fritz Hitchcock, and Board Member, David Wilson, have both been awarded the 2002 Toyota President's Award. "Making customer's happy..." is what it takes to earn this distinction and once again, Mr. Hitchcock and Mr. Wilson have been recognized for their high standards.

**Why not visit us
on the web at:**



www.nmvb.ca.gov

Or e-mail us at:

nmvb@pacbell.net



MEDIATION SPOTLIGHT

Mediation Services
Representative
Param Pabla

On October 4, 2001, the New Motor Vehicle Board Consumer Mediation Services Program received a mediation request from a consumer regarding his 2000 Subaru Outback. Mediation Services Representative, Param Pabla, was assigned to the case.

Mr. Pabla contacted the consumer who explained he wanted the Outback repurchased. He stated the throttle position sensor was replaced three times, and the engine control module was replaced twice. Additionally, the vehicle was out of service for more than 40 days for these repairs.

On October 11, 2001, Mr. Pabla directed a letter of inquiry to Subaru of America, Inc., ("Subaru") asking for a response to the consumer's concerns. Subaru responded by letter on December 19, 2001, declining the repurchase request. However, Subaru noted the vehicle was still under warranty, and therefore, they would continue to repair any defects. This letter was forwarded to the consumer.

On January 24, 2002, the consumer contacted Mr. Pabla expressing concern that Subaru appeared to be unaware of the number of repair attempts and the amount of time the vehicle was in the shop. Mr. Pabla contacted Subaru to discuss the consumer's concerns. He requested that they review the case taking into consideration the Song-Beverly Consumer Warranty Act. As a result of the conversation, Subaru agreed to review the case once more.

On February 6, 2002, Subaru granted the consumer's request for repurchase after reviewing an additional repair order. At the time, the consumer was out of the country. Upon the consumer's return, Mr. Pabla facilitated the repurchase of the Outback. On April 18, 2002, the consumer informed Mr. Pabla that he was very satisfied with the outcome of his case.



CAR BUFF EXTRAORDINAIRE

Public Board Member Tom Flesh recently appeared next to his 1969 Z28 Camaro on the front cover of the Greater Los Angeles New Car Dealers Association's publication. The publication featured the 2002 California Motor Car Dealers Association State Convention's Classic Car Rally as well as other convention events and participants. Mr. Flesh's 1965 Mustang and 1957 Thunderbird were also on display at the rally. Mr. Flesh drove his 2002 Thunderbird to the convention.

Public Member Tom Flesh and
2001-2002 CMCDCA President,
Avery Green



MEDIATION STATISTICS

Mediation Phone Calls Received **4,274**

Mediation Request Forms
Sent to Consumers **716**

Cases Filed **397**

July 2001 thru May 2002

You can reach Mediation Services Staff at
(916) 445-1888

UPCOMING BOARD MEETINGS

General Board Meeting
September 10, 2002
Los Angeles



General Board Meeting
October 29, 2002
San Francisco

Special Board Meeting
December 5, 2002
Sacramento

Board Meeting dates are subject to change. A meeting agenda with time and location details is mailed 10 days prior to the meeting to all interested parties.

The New Motor Vehicle Board values comments and suggestions from our readers. Your contributions assist us in providing a newsletter that is meaningful and informative. For this reason, we ask that you take a moment to complete the following questionnaire. Your participation is appreciated.

1. How useful do you find the information in the In-Site? 1. ☐ 2. ☐ 3. ☐ 4. ☐ 5. ☐
High _____ Low

2. What new information would you like to see in the In-Site?

3. Is there any information you do not find useful?

4. Additional suggestions/comments:

Please return questionnaire to:

New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95814
Attention: In-Site Editor

